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IN THE

Supreme Court of the United States

No. 1277.

October Term, 1946.

In the Matter
of
The Application to Discipline JULES CHOPAK, an Attorney and Counselor at Law.

JULES CHOPAK, Appellant.

PETITION FOR REVIEW ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION IN THE FURTHER LIGHT OF AND INDICATED BY CRAIG ET AL. V. HARNEY, NO. 241, OCTOBER TERM, 1946, DECIDED MAY 19, 1947.

Your petitioner respectfully prays the Honorable Court as follows:

1. To make no distinction between individuals for their remarks.

2. Not to grant greater liberality to newspapers and laymen for their expressions than to lawyers.

3. Not to declare greater onus and restriction as to a lawyer than would be granted to a group of individuals or to newspapers.

4. To make no distinction between freedom of speech and freedom of the press.

5. Not to cast upon lawyers infirmity and impediment which is saved to newspapers and public men by this court.

6. Not to condemn a lawyer for a private letter to a judge, which, if published in a newspaper as an editorial or a comment would be allowed by this Honorable Court.

7. Not to grant judges of the District Court, created by Congress, greater powers than the Constitution, First Amendment, grants to Congress, namely "abridging the freedom of speech or of the press".

8. Not to set one rule for "criminal contempt" cases, as were *Bridges, Pennekamp and Craig cases,* and another rule for disciplinary proceedings of attorneys.

9. Not to grant immunity to the District Court of the United States from comment or criticism, whether public or private, which the Court has held shall not be granted to State Courts.

IN ADDITION TO THE FOREGOING, I RESPECTFULLY FURTHER ARGUE:

In my main Petition and Brief, I have alluded to the *Bridges* and *Pennekamp cases* at pp. 3, 7, 8, 12, 18. I have liberally quoted from the *Pennekamp case* in the Record in the Assignment of Errors at fols. 52 to 69 inclusive; and in my Answering Affidavit to the charges, I used the *Bridges case,* at fol. 184.

The District Court, which condemned me, made reference to the *Pennekamp case* at Record, fols. 393-394, to rule out the application at fol. 395. That Court chose not to be

governed by it. By its rule, it adjudged that a lawyer of the court had less freedom of expression because he was a lawyer of the court than had other citizens.

My Petition and accompanying Brief herein were docketed in this Court on April 22, 1947. The case of *Craig et al. v. Harney* was promulgated on May 19, 1947. I was unable to argue the *Craig case* previous to now.

Craig et al. v. Harney was a "constructive criminal contempt" case where the actors were sentenced to jail for 3 days. The decision from which I am appealing put me out of my office for *3 years.*

H had to do with newspaper notoriety repeated as news items, stories, articles, reports and editorials and published in three public newspapers serving communities with combined population of 152,000 persons. (My act was a private letter to the judge himself which was published by the judge himself).

The newspapers spoke of the judge and his rulings as "arbitrary action", "travesty on justice", "gross miscarriage of justice", "high handed", "outraged", and "tragedy".

This Court assessed the language so used as follows:

> *"This was strong language, intemperate language, and, we assume, an unfair criticism. But a judge may not hold in contempt one 'who ventures to publish anything that tends to make him unpopular or to belittle him. . . .'* See *Craig v. Hecht,* 263 U. S. 255, 281, Mr. Justice Holmes dissenting. *The vehemence of the language used is not alone the measure of the power for contempt.*
>
> *The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil."*
>
> • • •

Italics, except titles, are mine.

> *"It might well have a tendency to lower the standing of the* judge in the public eye."
>
> * * *
>
> "Giving the editorial all of the vehemence which the court below found in it we fail to see how it could in any realistic sense create an imminent and serious threat to the ability of the court to give fair consideration to the motion for rehearing."

The trial judge, in the *Craig case,* "concluded that the reports and editorials were designed falsely" * * * "to prejudice and influence the court in its ruling on the motion for a new trial then pending". On appeal, this was held "reasonably calculated to interfere with *the due administration of justice"; also to "force, compel and coerce"* the judge. These arguments paralleled arguments made by the District Court judges who condemned me in the first instance in their "Opinion of Suspension" printed in the Record at fols. 356 to 358; 386 to 389. It was adhered to by two of the appellate judges with scarcely any analysis of the topics involved; but considerably disapproved by the dissenting judge, who preferred to follow this Court in the *Bridges and Pennekamp cases.* He, too, did not know of the *Craig* decision, when he wrote.

The majority of the Justices of this Court decided to adhere to the rule, previously crystallized and consolidated which

> *"forbade the punishment by contempt for comment on pending cases in absence of a showing that the utterances created 'clear and present danger' to the administration of justice.* (314 U. S. pp. 260-264."

The reason given was:

> "and the *unequivocal command of the First Amendment serve as constant reminders that freedom of speech and of the press should not be impaired through the exercise of that power, unless there is no doubt that the utterances in question are a serious and imminent threat to the administration of justice."*

And, also,

"There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to supress, edit, or censor events which transpire in proceedings before it."

The concluding words of the majority of this Court in the prevailing opinion were:

"But, the rule of the Bridges and Pennekamp cases is fashioned to serve the needs of all litigation, not merely select types of pending cases.

Reversed."

The majority of the Court considered the possible disturbance of the judge from an exaggerated angle, when it said:

"Conceivably, a plan of reporting on a case could be so designed and executed as to poison the public mind, to cause a march on the court house, or otherwise to disturb the delicate balance in a highly wrought situation as to imperil the fair and orderly functioning of the judicial process. But it takes more imagination than we possess to find in" • • •.

The Court also said:

"But the law of contempt is not made for the protection of judges who may be sensitive to the winds of public opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate."

• • •

"Nor can we assume that the trial judge was not a man of fortitude".

Mr. Justice Murphy, concurring, said generally on this phase:

"In my view, the Constitution forbids a judge from summarily punishing a newspaper editor for printing an unjust attack upon him or his method of dispensing justice. *The only possible exception is in the rare instance where the attack might reasonably cause a real impediment to the administration of justice. Unscrupulous and vindictive criticism of the judiciary is regrettable. But judges must not retaliate by a summary*

suppression of such criticism for they are bound by the command of the First Amendment. Any summary suppression of unjust criticism carries with it an ominous threat of summary suppression of all criticism. It is to avoid that threat that the First Amendment, as I view it, outlaws the summary contempt method of suppression.

Silence and a steady devotion to duty are the best answers to irresponsible criticism; *and those judges who feel the need for giving a more visible demonstration of their feelings may take advantage of various laws passed for that purpose which do not impinge upon a free press. The liberties guaranteed by the First Amendment, however, are too highly prized to be subjected to the hazards of summary contempt procedure.*"

On a strikingly parallel instance between the *Craig case* and my own, this Court said:

"It might well have a tendency to lower the standing of the judge in the public eye. *But it is hard to see on these facts how it could obstruct the course of justice in the case before the court. The only demand was for a hearing. There was no demand that the judge reverse his position—or else.*"

I, too, was charged with conduct *prejudicial to the administration of justice* at fols. 102, 107, in response to my long series of complaints against Judge Clarence G. Galston. fols. 157 to 166; fols. 202 to 209 and fols. 296 to 300. The refusal of a hearing was corroborated by another attorney.

Moreover, Mr. Justice Jackson, in his *dissenting opinion,* has led the way to a final point of support for my position and defense. He showed that an elective judge had something to fear, more so than an *appointive* judge.

He said:

"From our sheltered position, fortified by life tenure and other defenses to judicial independence, it is

easy to say that this local judge ought to have shown more fortitude in the face of criticism. But he had no such protection. He was an elective judge, who held for a short term. I do not take it that an ambition of a judge to remain a judge is neither unusual or dishonorable."

On this point, the majority of the Court said:

> *"Judges who stand for reelection run on their records. That may be a rugged environment, criticism is expected. Discussion of their conduct is appropriate, if not necessary. The fact that the discussion at this particular point of time was not in good taste falls far short of meeting the clear and present danger test".*

In my case, Judge Clarence G. Galston, was well sheltered against any words of mine in a private letter to him, for it required an *impeachment* by Congress to remove him or to hurt him in his office as a judge. It hurt me more, when reappearing before him; and also *in the whispering among the judges,* which cannot be denied.

May 26, 1947.

Respectfully submitted,

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BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.